

House Daily Reader

Monday, February 26, 2001

Bills Included				
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State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

448E0567

SENATE ENGROSSED NO. **HB 1154** - 02/23/2001

Introduced by: Representatives Adelstein, Abdallah, Brown (Richard), and Duniphan and
Senator Whiting

1 FOR AN ACT ENTITLED, An Act to clarify the application of certain driving privilege
2 penalties with regard to juvenile adjudications.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-12-52.4 be amended to read as follows:

5 32-12-52.4. Upon a first conviction or a first adjudication of delinquency for violation, while
6 in a motor vehicle, of § 35-9-2, the court shall suspend the driver's license or driving privilege
7 of any driver of a vehicle who was under the age of twenty-one when the offense occurred, for
8 a period of six months.

9 Upon a second or subsequent conviction or a second or subsequent adjudication of
10 delinquency for a violation, while in a motor vehicle, of § 35-9-2, the court shall suspend the
11 driver's license or driving privilege of any driver of a vehicle who was under the age of
12 twenty-one when the offense occurred, for a period of one year. For any offense under this
13 section, the court may issue an order permitting the person to operate a motor vehicle for
14 purposes of the person's employment or attendance at school.

15 Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and 26-8C, the Unified

Judicial System shall notify the Department of Commerce and Regulation of any conviction or adjudication for a violation, while in a motor vehicle, of § 35-9-2 or chapter 32-23. The period of suspension shall begin on the date the person's suspended driver's license is received by the court or the Department of Commerce and Regulation. At the expiration of the period of suspension, a person may make application to have the license reinstated and pay the license fee as prescribed in § 32-12-47.1.

Section 2. That § 35-9-7 be amended to read as follows:

35-9-7. If the conviction or adjudication for a violation of § ~~35-9-1~~, 35-9-1.1, or 35-9-2 is for a first offense, the court shall, in addition to any other penalty allowed by law, order the ~~revocation~~ suspension of the defendant's driving privileges for a period not less than thirty days and not to exceed one year. However, the court may issue an order permitting the person to operate a motor vehicle for purposes of the person's employment or attendance at school or to court-ordered counseling programs during the hours of the day and the days of the week set forth in the order. The court may also restrict the privilege in such manner as it sees fit for a period not to exceed one year.

If the conviction or adjudication for a violation of § ~~35-9-1~~, 35-9-1.1, or 35-9-2 is for a second or subsequent offense, the court shall, in addition to any other penalty allowed by law, order the ~~revocation~~ suspension of the defendant's driving privileges for a period not less than sixty days and not to exceed one year.

Section 3. That chapter 35-9 be amended by adding thereto a NEW SECTION to read as follows:

If the conviction or adjudication for a violation of § 35-9-1 is for a first offense, the court shall, in addition to any other penalty allowed by law, order the revocation of the defendant's driving privileges for a period not less than thirty days and not to exceed one year. However, the

1 court may issue an order permitting the person to operate a motor vehicle for purposes of the
2 person's employment or attendance at school or to court-ordered counseling programs during
3 the hours of the day and the days of the week set forth in the order. The court may also restrict
4 the privilege in such manner as it sees fit for a period not to exceed one year.

5 If the conviction or adjudication for a violation of § 35-9-1 is for a second or subsequent
6 offense, the court shall, in addition to any other penalty allowed by law, order the revocation of
7 the defendant's driving privileges for a period not less than sixty days and not to exceed one year.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

336E0720

SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1193** - 02/21/2001

Introduced by: Representatives Peterson (Bill) and Clark and Senator Staggers

1 FOR AN ACT ENTITLED, An Act to provide procedures for initiating proposals for
2 cooperation or consolidation as authorized by Constitutional Amendment B as agreed to by
3 the voters of South Dakota during the 2000 general election.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. Terms used in this Act mean:

6 (1) "Governing body," the board of commissioners, the common council, the executive
7 board, or other name by which a local government entity is controlled, concerned, or
8 affected;

9 (2) "Local government entity," the State of South Dakota, county, municipality, or
10 special governmental district authorized by the laws of South Dakota or any of the
11 states that border South Dakota;

12 (3) "Person in charge of an election" or "person charged with the conduct of an election,"
13 the county auditor in all cases except local elections for a municipality, school district,
14 township, or other political subdivision, in which case it is the officer having the
15 position comparable to the auditor in that unit of government if not specifically

1 designated by law;

2 (4) "Publish" or "publication," publication in the official newspaper of the local
3 government entities concerned or affected; or if no official newspaper is available,
4 publication in a legal newspaper published in the local government entity, if any; or,
5 if no legal newspaper is published within the local entity, publication in any legal
6 newspaper that serves the local government entity;

7 (5) "Resolution of cooperation or consolidation" or "resolution," any initiated measure
8 made for the purpose of initiating, effecting, or carrying out an intention to cooperate
9 in providing services or functions, or combining services or functions between local
10 governmental entities.

11 Section 2. The right to propose a resolution of cooperation or consolidation to the
12 government of a local government entity rests with the registered voters of the local government
13 entity. Any resolution proposed under this chapter shall be referred to a vote of the registered
14 voters of the local government entity by the filing, with the entity's person in charge of an
15 election, of a petition signed by a number of voters equivalent to fifteen percent of those voting
16 in the last preceding gubernatorial election in the local government entity. A petition to propose
17 a resolution shall be filed with the person in charge of an election of each of the affected local
18 government entities before an election may occur.

19 Section 3. No initiated resolution of cooperation may become operative unless approved by
20 a majority of the votes cast in each of the affected local government entities. If so approved, the
21 resolution takes effect one hundred eighty days after the election or other date as specifically
22 stated in the resolution or within one hundred eighty days after the election as the affected local
23 government entities may agree.

24 Section 4. An initiated resolution may propose combining or consolidating any local

1 government functions including those that may be necessary for the immediate preservation of
2 the public peace, health, or safety or for the support of any government or existing public
3 institutions.

4 Section 5. The State Board of Elections shall promulgate rules pursuant to chapter 1-26
5 prescribing the format for a resolution of cooperation or consolidation petition and its
6 verification.

7 Section 6. The signer or circulator of the petition may add the signer's place of residence and
8 the date of signing. The signer's post office box number may be given in lieu of a street address
9 if the signer lives within a municipality of the second or third class. A date may be written in full
10 or may be written using standard abbreviations, including numerals. No signature on a petition
11 is valid if signed more than one year before the filing of the petitions.

12 Section 7. Each person who has circulated a petition shall, before filing the petition, sign an
13 affidavit, under oath, verifying that the person circulated the petition and that either the person
14 circulating the petition or the signer added the signer's place of residence and date of signing. If
15 multiple sheets of paper are necessary to obtain the required number of signatures, each sheet
16 shall be self-contained and separately verified by the circulator.

17 Section 8. When a petition to initiate a resolution is filed with a person in charge of an
18 election, that person shall present it to the local government entity governing board at its next
19 regular or special meeting. The local person in charge of an election shall certify that the
20 minimum number of signatures required pursuant to section 2 of this Act have been filed.

21 The local government entity governing boards shall submit the resolution to a vote in the next
22 general election after filing in all affected local government entities. The filing in all affected local
23 government entities shall occur not later than the second Tuesday in August of a general election
24 year for the question to appear on that year's ballot.

1 Section 9. If the local government entities cannot reach an agreement on sharing costs, each
2 local government entity is responsible for its costs for the election. If there are any shared costs
3 between the local government entities, they shall be paid in proportional shares based on the
4 number of registered voters in each of the affected jurisdictions.

5 Section 10. The person in charge of an election shall have ballots printed for the vote upon
6 the resolution and have them distributed as other official ballots are distributed. All questions to
7 be voted upon at the same election may be submitted upon the same ballot.

8 Section 11. The person in charge of an election shall preserve all petitions requesting a
9 resolution for at least two years. The petitions are open to public inspection upon reasonable
10 request.

11 Section 12. No question contained in an initiated resolution may be voted upon again within
12 one year from the date of the election thereon.

13 Section 13. A local government entity governing board may propose and adopt a resolution
14 under this Act and directly present it to the people for a vote as allowed under this Act without
15 resorting to the petition process.

16 Section 14. The court shall take judicial notice of the existence of all local government
17 entities organized under the general laws of this state and of any change of organization
18 authorized thereby.

19 Section 15. Any petition filed pursuant to this Act may be made up and signed and shall be
20 liberally construed as provided by the statute governing an initiated law.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

528E0067

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1199** - 02/21/2001

Introduced by: Representatives Bartling, Broderick, Duniphan, Flowers, Klaudt, and
Monroe and Senators Koetzle, Albers, and Reedy

1 FOR AN ACT ENTITLED, An Act to adjust the salary schedule for county officials.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 7-7-9.1 be amended to read as follows:

4 7-7-9.1. The board of county commissioners shall establish, by resolution, the salary payable
5 to the county treasurer, county auditor, and county register of deeds ~~shall be established by each~~
6 ~~board of county commissioners, by resolution, but.~~ The salary payable may not be less than the
7 following schedule ~~and be as~~ based upon the most recent decennial federal census of population
8 for counties:

9	County Population	Salary Schedule
10	Below 10,000	\$20,689 <u>23,189</u>
11	10,000-14,999	21,234 <u>23,734</u>
12	15,000-24,999	22,305 <u>24,805</u>
13	25,000-69,999	24,983 <u>27,483</u>
14	70,000 and over	27,324 <u>29,824</u>

15 The board of county commissioners may not decrease the salary of the county treasurer,

1 county auditor, or county register of deeds during ~~the term~~ consecutive terms of office of the
2 county treasurer, county auditor, or county register of deeds.

3 Section 2. Section 1 of this Act is effective on January 1, 2002.

4 Section 3. That § 7-7-9.1 be amended to read as follows:

5 7-7-9.1. The board of county commissioners shall establish, by resolution, the salary payable
6 to the county treasurer, county auditor, and county register of deeds ~~shall be established by each~~
7 ~~board of county commissioners, by resolution, but.~~ The salary payable may not be less than the
8 following schedule ~~and be as~~ based upon the most recent decennial federal census of population
9 for counties:

County Population	Salary Schedule
Below 10,000	\$20,689 <u>25,689</u>
10,000-14,999	21,234 <u>26,234</u>
15,000-24,999	22,305 <u>27,305</u>
25,000-69,999	24,983 <u>29,983</u>
70,000 and over	27,324 <u>32,324</u>

16 The board of county commissioners may not decrease the salary of the county treasurer,
17 county auditor, or county register of deeds during ~~the term~~ consecutive terms of office of the
18 county treasurer, county auditor, or county register of deeds.

19 Section 4. Section 3 of this Act is effective on January 1, 2003.

20 Section 5. That chapter 7-7 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The board of county commissioners shall establish, by resolution, the salary payable for the
23 combination of two or more of the following county elected positions. The salary payable may
24 not be less than the minimum salary provided by this section as based upon the most recent
25 decennial federal census of population for counties.

1 For the combination of two of the following: county treasurer, county auditor, or county
2 register of deeds, the minimum salary for counties shall be:

3	County Population	Salary Schedule
4	Below 10,000	\$27,000
5	10,000-14,999	28,500
6	15,000-24,999	30,000
7	25,000-69,999	33,000
8	70,000 and over	36,000

9 For the combination of all three of the following: county treasurer, county auditor, and
10 county register of deeds, the minimum salary for counties shall be:

11	County Population	Salary Schedule
12	Below 10,000	\$29,000
13	10,000-14,999	30,500
14	15,000-24,999	32,000
15	25,000-69,999	35,000
16	70,000 and over	39,000

17 Section 6. That § 6-15-2 be amended to read as follows:

18 6-15-2. Section 6-15-1 does not apply to any law, rule, or regulation:

- 19 (1) Concerning the conduct of elections;
- 20 (2) Required by federal law;
- 21 (3) Required to fund the unified judicial system;
- 22 (4) Required to fund the welfare system;
- 23 (5) ~~To any law creating~~ Creating, modifying, or repealing any criminal law; ~~or~~
- 24 (6) ~~To any law reauthorizing~~ Reauthorizing but not expanding existing statutory
- 25 authority; or

- 1 (7) Specifying a minimum salary for public officials.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

457E0522

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1202** - 02/21/2001

Introduced by: Representative McCaulley and Senator Everist

1 FOR AN ACT ENTITLED, An Act to provide for the recovery of reasonable attorney's fees and
2 costs in actions for deceit.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 20-10-1 be amended to read as follows:

5 20-10-1. ~~One~~ Any person who willfully deceives another, with intent to induce ~~him~~ the other
6 to alter ~~his~~ the other's position to his or her injury or risk, is liable for any ~~damage which he~~
7 ~~thereby suffers~~ damages suffered by the other. The prevailing party may be awarded reasonable
8 attorney fees and costs which shall be charged as disbursements pursuant to § 15-6-54(d).

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0805

SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1280** - 02/21/2001

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to replace certain geographic names that use offensive
2 names, words, or phrases.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Legislature finds that certain geographic place names are offensive and
5 insulting to all South Dakota's people, history, and heritage. These place names should be
6 replaced by names that reflect South Dakota's people, history, and heritage without resorting to
7 harmful or offensive stereotypes, names, words, or phrases. Section 4 of this Act lists the
8 currently known geographic names that are harmful or offensive. All state and local government
9 agencies may make changes to maps and any other reference materials to reflect the changes
10 provided in this Act. A copy of this Act shall be forwarded by the Legislative Research Council
11 to the United States Board on Geographic Names for consideration as recommendations for
12 changes on any federal maps and reference materials that reference these names and places.

13 Section 2. The geographic place names set forth in section 4 of this Act are considered
14 harmful and offensive. The new place names provided in section 4 of this Act shall replace and
15 shall be used by all state and local agencies in South Dakota in all future publications, maps, or

other reference materials published after the effective date of this Act.

Section 3. If no replacement place name for a specific location or feature is provided in section 4 of this Act, a replacement name may be suggested by the county or other local government entity, or by any interested person and may be submitted to the Department of Environment and Natural Resources in Pierre for a period of ninety days following the effective date of this Act. The final decision on any replacement names, not previously approved by the Legislature pursuant to this Act, shall be made jointly by the Board of Water and Natural Resources, the Board of Minerals and Environment, and the Transportation Commission within sixty days after the expiration of the ninety-day deadline. Any place names adopted in the manner described in this section shall be adopted and used and shall replace the offensive place names listed in section 4 of this Act pursuant to the provisions of this Act.

Section 4. Offensive place names in South Dakota by county are replaced as follows:

County	Current place name	Place name changed to
Codington	Squaw Lake	Serenity Lake
Custer	Little Squaw Creek	No recommendation
	Negro Canyon	" "
	Negro Wool Ridge	" "
Fall River	Squaw Flat	Hat Creek Flat
Gregory	Squaw Creek	No recommendation
	Squaw Creek Reservoir	" "
Haakon	Squaw Creek	No recommendation
	Negro Creek	" "
Harding	Squaw Creek	No recommendation
	East Squaw Creek	" "
	Squaw Tree Spring	" "
	West Squaw Creek	" "

1	Jackson	Big Negro Draw	No recommendation
2		Little Negro Creek	" "
3	Jones	Squaw Creek	Pitan Creek
4	Lake	Negro Creed	Franklin Creek
5	Lawrence	Squaw Creek	Cleopatra Creek
6		East Branch of Squaw Creek	East Branch Cleopatra Creek
7		Negro Gulch	Last Chance Gulch
8		Negro Hill	African Hill
9	Marshall	Squaw Hill	Six Mile Hill
10		Squaw Lake	Six Mile Lake
11	Meade	Squaw Butte School	No recommendation
12		Squaw Butte	" "
13		Squaw Creek	" "
14		Negro Creek School	" "
15	Moody	Squaw Creek	Jack Moore Creek
16	Pennington	Squaw Creek	Cedar Breaks Creek
17		Negro Creek	Medicine Mountain Creek
18	Shannon	Little Squaw Humper Creek	Little Red Shirt Creek
19		Little Squaw Humper Table	Little Red Shirt Table
20		Squaw Humper Creek	Two Bulls Creek
21		Squaw Humper Dam	Two Bulls Dam
22		Squaw Humper Table	Two Bulls Table
23	Stanley	Negro Edge Canyon	No recommendation
24	Ziebach	Squaw Teat Butte	Peaked Butte
25		Squaw Teat Creek	East Rattlesnake Creek

26

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

912E0543

SENATE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HCR 1008** - 02/20/2001

Introduced by: Representatives Jensen, Bartling, Begalka, Bradford, Burg, Elliott, Flowers, Frost, Fryslie, Hanson (Gary), Hundstad, Hunhoff, Klaudt, Kloucek, Lintz, Nachtigal, Olson (Mel), Peterson (Jim), Rhoden, Sigdestad, and Van Norman and Senators Symens, Bogue, Dennert, Diedrich (Larry), Duxbury, Koskan, Putnam, and Volesky

1 A CONCURRENT RESOLUTION, Supporting mandatory country of origin labeling for
2 agricultural products.

3 WHEREAS, the dramatic increase in the incidence of Bovine Spongiform Encephalopathy
4 in Europe has promoted the World Health Organization to declare its "exposure worldwide" thus
5 critically threatening the safety of our food supply; and

6 WHEREAS, a labeling system that enhances traceability and accountability will help insure
7 the safe consumption of food; and

8 WHEREAS, the taxpaying consumers have made a huge investment in food safety and have
9 the right to know where their food is produced; and

10 WHEREAS, U.S. growers and producers are subject to numerous regulations designed to
11 protect food safety, our environment, and the welfare of our workers, and co-mingling of food
12 produced and processed under these rigorous standards with food from every other source is a

1 practice that undermines the credibility of our food system:

2 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Seventy-
3 sixth Legislature of the State of South Dakota, the Senate concurring therein, that the
4 Legislature urges Congress to enact legislation that mandates country of origin labeling for meat,
5 dairy products, and produce and requires that products labeled "U.S. Produced" be produced,
6 born, raised, or processed completely in the United States. Any product bearing a "USDA
7 INSPECTED" label must also state the country of origin as a part of that label.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0346

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 57** - 02/23/2001

Introduced by: The Committee on State Affairs at the request of the Department of Health

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to anatomical gifts.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 34-26-23.1 be amended to read as follows:

4 34-26-23.1. If a document of gift is attached to or imprinted on a donor's motor vehicle
5 ~~operator's driver~~ license or nondriver identification card, the document of gift shall comply with
6 § 34-26-23. If a person is less than eighteen years of age, a document of gift may only be
7 attached to or imprinted on a donor's motor vehicle ~~operator's driver~~ license or nondriver
8 identification card if a parent or guardian of the person consents. Revocation, suspension,
9 expiration, or cancellation of the license does not invalidate the anatomical gift.

10 Section 2. That § 34-26-23.2 be amended to read as follows:

11 34-26-23.2. Any state or local law enforcement agency, officer, or personnel, that ~~may have~~
12 has access to a decedent's motor vehicle ~~operator's driver~~ license or nondriver identification card,
13 or the information thereon, shall inform, upon request, the decedent's attending physician or
14 nurse, next of kin, the coroner, or any other person having lawful custody of the decedent's body,
15 of ~~any intention of the decedent~~ the decedent's intention, as indicated on the decedent's motor

1 vehicle operator's driver license or nondriver identification card, to make an anatomical gift
2 pursuant to § 34-26-23 or 34-26-23.1. Any state or local law enforcement agency, officer, or
3 personnel shall also inform, upon request, any procurement agency for anatomical gifts, including
4 organs, tissues, and eyes, of such intention of the decedent.

5 Section 3. That chapter 34-26 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 An anatomical gift of all or part of the body under § 34-26-21 made pursuant to §§ 34-26-22
8 to 34-26-23.1, inclusive, is irrevocable by any person other than the donor as provided in section
9 4 of this Act. An anatomical gift does not require the consent or concurrence of any person after
10 the donor's death.

11 Section 4. That chapter 34-26 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 A donor may amend or revoke an anatomical gift only by:

- 14 (1) Removing the designation from the donor's driver license or nondriver identification
15 card;
- 16 (2) An oral statement made by the donor to two persons in the presence of each other or
17 to an attorney or attorney-in-fact indicating the donor's intent to revoke the gift;
- 18 (3) Any form of communication made by the donor during a terminal illness or injury
19 addressed to a physician or surgeon; or
- 20 (4) A signed card or document found on the donor's person or in the donor's effects.

21 Section 5. That chapter 34-26 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 The Department of Commerce and Regulation, with the advice of the Department of Health,
24 shall provide each person renewing or applying for a driver license or nondriver identification

- 1 card an opportunity to review information about organ donation, such as information available
- 2 from the organ procurement organization designated by the federal government for this state.
- 3 The person shall affirm on the application that the person has reviewed the information.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

634E0382

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **SB 87** - 02/22/2001

Introduced by: Senators Diedtrich (Elmer), Moore, and Whiting and Representatives
Solum, Davis, McCoy, Slaughter, and Van Etten

1 FOR AN ACT ENTITLED, An Act to provide for uniform prescription drug information cards.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Any health benefit plan that provides coverage for prescription drugs or devices
4 on an outpatient basis, or administers such a plan, including third-party administrators for self-
5 insured plans and state-administered plans, shall issue to its primary insured a card or other
6 technology containing uniform prescription drug information. The director of the Division of
7 Insurance shall prescribe the format and elements of information for the uniform prescription
8 drug information card or technology and shall consider the format and elements of information
9 approved by the National Council for Prescription Drug Programs (NCPDP) and the required
10 and conditional or situational fields and the most recent pharmacy identification card or
11 technology implementation guide produced by NCPDP. A health benefit plan is not required to
12 issue a pharmacy identification card separate from another identification card issued to an insured
13 under the health benefit plan if the identification card contains the elements of information
14 required by the Division of Insurance.

1 Section 2. A health benefit plan shall issue a card or other technology required by section 1
2 of this Act upon enrollment. The card or technology shall be reissued upon any change in the
3 insured's coverage that impacts data contained on the card or upon any change in the format
4 adopted by the director of the Division of Insurance. However, the health benefit plan is not
5 required to issue a new card or technology more often than once each calendar year. Newly
6 issued cards or technology shall be updated with the latest coverage information and the director
7 of the Division of Insurance shall consider the NCPDP standards then in effect and the
8 implementation guide then in use.

9 Section 3. As used in this Act, the term, health benefit plan, means an accident and health
10 insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a
11 health maintenance organization subscriber contract; a plan provided by a multiple employer
12 welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted
13 by the Employee Retirement Income Security Act of 1974, as amended to January 1, 2001, or
14 by any waiver of or other exception to that Act provided under federal law or regulation. The
15 term does not apply to any plan, policy, or contract that provides coverage only for:

- 16 (1) Accident;
- 17 (2) Credit;
- 18 (3) Disability income;
- 19 (4) Specified disease;
- 20 (5) Dental;
- 21 (6) Vision;
- 22 (7) Coverage issued as a supplement to liability insurance;
- 23 (8) Medical payments under automobile or homeowners;
- 24 (9) Insurance under which benefits are payable with or without regard to fault and that

1 is statutorily required to be contained in any liability policy or equivalent self-
2 insurance;

3 (10) Hospital income or indemnity;

4 (11) Long-term care; and

5 (12) Medicare supplement.

6 Section 4. This Act applies to health benefit plans that are delivered, issued for delivery, or
7 renewed on and after July 1, 2002. For purposes of this Act, renewal of a health benefit policy,
8 contract, or plan is presumed to occur on each anniversary of the date on which coverage was
9 first effective on the person or persons covered by the health benefit plan.

10 Section 5. The director of insurance shall enforce the provisions of this Act. The director of
11 insurance may promulgate rules pursuant to chapter 1-26 to establish the format and elements
12 of information for the uniform information card or technology to be used in the state following
13 the standards established in sections 1 and 2 of this Act.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

229E0022

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 92** - 02/23/2001

Introduced by: Senators Ham, Albers, Bogue, Daugaard, Dennert, Everist, Kleven, Madden, Reedy, Staggers, Sutton (Dan), Symens, Vitter, and Volesky and Representatives Hennies (Thomas), Adelstein, Bartling, Begalka, Brown (Richard), Burg, Clark, Davis, Derby, Duenwald, Duniphan, Frost, Garnos, Hanson (Gary), Hennies (Don), Holbeck, Hunhoff, Jaspers, Jensen, Kloucek, Koistinen, Konold, McCoy, Rhoden, Slaughter, and Wick

1 FOR AN ACT ENTITLED, An Act to provide for the care of certain abandoned children and
2 for the termination of parental rights.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. An emergency medical services provider or licensed child placement agency shall
5 take possession of a child who appears to be sixty days of age or younger if the child is
6 voluntarily delivered to the provider or agency by the child's parent and the parent does not
7 express an intent to return for the child. Any provider or agency who takes possession of a child
8 pursuant to this section shall perform any act necessary to protect the physical health and safety
9 of the child.

10 Section 2. It is not a crime for a parent to deliver a child to an emergency medical services
11 provider or a licensed child placement agency if the child has not been harmed prior to being left
12 with the emergency medical services provider or a licensed child placement agency.

1 Section 3. If a parent of a child relinquishes custody of the child to an emergency medical
2 services provider or a licensed child placement agency as provided in section 1 of this Act, then,
3 after fourteen days, by operation of law:

4 (1) All of that parent's rights with respect to the child are terminated; and

5 (2) The child becomes a ward of the state or licensed child placement agency.

6 Section 4. Any emergency medical services provider or licensed child placement agency that
7 accepts custody of a child pursuant to section 1 of this Act may ask the child's parent for
8 pertinent medical information relating to the child's medical history. However, the parent leaving
9 the child is not required to provide any information, including the name of the parents.

10 Section 5. Any emergency medical services provider or licensed child placement agency that
11 accepts physical custody of a child pursuant to section 1 of this Act is immune from civil,
12 criminal, and administrative liability for any act of commission or omission in connection with
13 the acceptance of that custody or the provision of care for the child while the child is in the
14 provider's or agency's custody.

15 Section 6. The emergency medical services provider or a licensed child placement agency
16 shall immediately notify the Department of Social Services that the provider or agency has taken
17 possession of the child. The department or licensed child placement agency shall assume the care,
18 custody, and control of the child immediately upon receipt of the notice. However, a licensed
19 child placement agency that has taken possession of a child may assume the care, custody, and
20 control of the child. The department or licensed child placement agency may not attempt to
21 identify, contact, or investigate the parent who voluntarily delivered the child to an emergency
22 medical services provider a licensed child placement agency unless it appears the child has been
23 harmed.

24 Section 7. If one parent of a child relinquishes custody of the child to an emergency medical

1 services provider or a licensed child placement agency as provided in section 1 of this Act, the
2 other parent may file an action for custody of the child. The nonrelinquishing parent shall file
3 such an action within thirty days after the provider or agency accepts custody of the child from
4 the relinquishing parent. In such an action, the nonrelinquishing parent shall prove the following
5 by a preponderance of the evidence:

6 (1) He or she is the parent of the child; and

7 (2) He or she did not consent to relinquishment of the child's custody to the provider or
8 agency.

9 Section 8. For the purposes of this Act, an emergency medical services provider is a licensed
10 health care facility or a clinic, any agent of a licensed health care facility or a clinic, a law
11 enforcement officer, an emergency medical technician, or a firefighter.

12 Section 9. Sixty days after the emergency medical services provider or licensed child
13 placement agency takes possession of the child a hearing shall be held in circuit court to
14 terminate parental rights. Due regard in the administration of this Act shall be afforded to the
15 Indian Child Welfare Act (25 U.S.C. Secs. 1901-1963) if that Act is applicable.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0736

HOUSE EDUCATION COMMITTEE ENGROSSED NO. **SB 160** - 02/22/2001

Introduced by: Senators Brown (Arnold), Everist, and Olson (Ed) and Representatives
McCoy and Peterson (Bill)

1 FOR AN ACT ENTITLED, An Act to prohibit the offering of postsecondary education credit
2 or degree by nonaccredited institutions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 13-49 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No person or governmental entity may offer postsecondary education credit or degree in
7 South Dakota, or while organized under the laws of South Dakota, unless currently participating
8 in any federal financial assistance program authorized by Title IV of the Higher Education Act
9 of 1965 as amended to January 1, 2001. A violation of this section is a Class 1 misdemeanor and
10 subjects the violator to a civil penalty of twenty-five thousand dollars.

11 The provisions of this section do not apply to a religious institution that offers credit or
12 degree solely for the purpose of conferring status or authority within that religion.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

381E0694

HOUSE TAXATION COMMITTEE ENGROSSED NO. **SB 175** - 02/20/2001

Introduced by: Senators Symens, Dennert, Diedrich (Larry), and Duxbury and
Representatives Jaspers, Burg, Hanson (Gary), Juhnke, Lange, and
Nachtigal

1 FOR AN ACT ENTITLED, An Act to exempt from sales and use tax certain contract services
2 provided to agricultural producers by an agent of a parent company through a local
3 contracting entity.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 There are specifically exempted from the provisions of this chapter and from the computation
8 of the tax imposed by it, the gross receipts from the sale of services rendered by a parent
9 company to a local cooperative, if the local cooperative is a local contracting entity, for the
10 purpose of paying for the services of an agent who meets with agricultural producers promoting,
11 educating, and providing technical assistance and information on the parent company's products
12 which are sold through a local contracting entity.

13 Section 2. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
14 follows:

1 There are specifically exempted from the provisions of this chapter and from the computation
2 of the tax imposed by it, the gross receipts from the sale of services rendered by a parent
3 company to a local cooperative, if the local cooperative is a local contracting entity, for the
4 purpose of paying for the services of an agent who meets with agricultural producers promoting,
5 educating, and providing technical assistance and information on the parent company's products
6 which are sold through a local contracting entity.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

455E0418

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 212** - 02/08/2001

Introduced by: Senators Apa, de Hueck, Duxbury, Hutmacher, Koetzle, McIntyre, Moore, Olson (Ed), and Reedy and Representatives Madsen, Brown (Richard), Burg, Davis, Garnos, Lange, Nesselhuf, Olson (Mel), Smidt, Teupel, and Wick

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding reduced tuition for
2 certain state employees.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 3-20-1 be amended to read as follows:

5 3-20-1. Any employee of the state who has been continuously employed by the state for a
6 period of ~~three years~~ one year may, upon compliance with § 3-20-4 and all of the requirements
7 for admission, attend and pursue any undergraduate or graduate course in any state educational
8 institution under the control and management of the Board of Regents upon the payment of fifty
9 percent of tuition and one hundred percent of required fees. The Board of Regents shall maintain
10 an annual record of the number of participants and the tuition dollar value of such participation.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0768

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 226** - 02/23/2001

Introduced by: Senators Everist and Brown (Arnold) and Representatives Peterson (Bill)
and Eccarius

1 FOR AN ACT ENTITLED, An Act to revise and supplement certain powers of the South
2 Dakota Building Authority, to provide for the establishment of a corporation by the South
3 Dakota Building Authority for the purpose of raising funds for specified purposes, to provide
4 for transfer and sale at any one time or from time to time of a portion of or all future right,
5 title, and interest of the State of South Dakota to certain amounts payable to the state by
6 various tobacco companies under a master settlement agreement in exchange for the deposit
7 of the net proceeds of such sale into the state permanent tobacco settlement development
8 trust fund, to establish certain funds, and to declare an emergency.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

10 Section 1. Terms used in this Act, mean:

- 11 (1) "Authority," the South Dakota Building Authority, a body corporate and politic,
12 organized and existing under chapter 5-12;
- 13 (2) "Bonds," bonds, bond anticipation notes, notes, certificates of ownership or
14 indebtedness, or other obligations issued, incurred, or otherwise created under the

1 authority of this Act and payable directly or indirectly out of or representing an
2 interest in tobacco settlement revenues or other rights under or with respect to the
3 master settlement agreement;

4 (3) "Corporation," the special purpose body corporate and politic established by the
5 authority by resolution as provided in section 3 of this Act;

6 (4) "Development programs," any program described in section 13 of this Act;

7 (5) "Master settlement agreement," the master settlement agreement entered into on
8 November 23, 1998, by attorneys general from the several states (including the State
9 of South Dakota) and various tobacco companies, as now or hereafter amended,
10 supplemented, or restated;

11 (6) "Master settlement escrow agent," the escrow agent under the master settlement
12 agreement;

13 (7) "Net proceeds of bonds," the original proceeds of bonds issued under this Act less any
14 amounts applied or to be applied to pay transaction and administrative expenses and
15 to fund any reserves deemed necessary or appropriate by the corporation, but does
16 not include any investment earnings realized thereon;

17 (8) "Net proceeds of sale of tobacco settlement revenues," the net proceeds of bonds plus
18 any residual interest in tobacco settlement revenues received or to be received by the
19 State of South Dakota from time to time as a result of any sale, conveyance, or other
20 transfer authorized in section 2 of this Act, but does not include any investment
21 earnings realized thereon;

22 (9) "Permanent tobacco settlement development trust fund," the State of South Dakota
23 permanent tobacco settlement development trust fund created by section 10 of this
24 Act;

1 (10) "Permitted investments," any investment authorized by §§ 4-5-23 and 4-5-26 together
2 with noncollateralized direct obligations of any bank or savings institution, insurance
3 company, or bank or insurance holding company if the institution or holding company
4 is rated in the highest four classifications by at least one standard rating service and
5 any bond, note, or other obligation of any state or any agency, authority, or other
6 instrumentality of any state or political subdivision thereof if the bond, note, or other
7 obligation is rated in the four highest classifications established by at least one
8 standard rating service;

9 (11) "Residual interest in tobacco settlement revenues," any tobacco settlement revenues
10 not required to pay principal or interest on bonds or administrative or transaction
11 expenses of the corporation or authority or to fund reserves or other requirements
12 relating to bonds issued, incurred, or otherwise created under this Act;

13 (12) "Tobacco settlement residual fund," the tobacco settlement residual fund created by
14 section 11 of this Act;

15 (13) "Tobacco settlement revenues," all of the amounts now or hereafter payable to the
16 State of South Dakota under or in connection with the master settlement agreement;

17 (14) "Tobacco development interest fund" the fund created by section 12 of this Act.

18 Section 2. At any one time or from time to time, all or any portion of the right, title, and
19 interest of the State of South Dakota in, to, and under the master settlement agreement,
20 including the right to receive and collect tobacco settlement revenues, may be sold, conveyed,
21 or otherwise transferred by the state to the authority or to a corporation established by the
22 authority under this Act in exchange for the net proceeds of bonds and a right to the residual
23 interest in tobacco settlement revenues. The net proceeds of bonds shall be deposited to the
24 permanent tobacco settlement development trust fund, and the residual interest in tobacco

1 settlement revenues shall be deposited to the tobacco settlement residual fund. Any sale,
2 conveyance, or other transfer authorized by this section shall be evidenced by an instrument or
3 agreement in writing signed on behalf of the state by the Governor. The Governor shall file a
4 certified copy of the instrument or agreement with the Legislature promptly upon execution and
5 delivery thereof. The instrument or agreement may include an irrevocable direction to the master
6 settlement escrow agent to pay all or a specified portion of amounts otherwise due to the State
7 of South Dakota under or in connection with the master settlement agreement, including, without
8 limitation, all or any portion of tobacco settlement revenues directly to or upon the order of the
9 authority or corporation, as the case may be, or to any escrow agent or any trustee under an
10 indenture or other agreement securing any bonds issued, incurred, or created under this Act. The
11 irrevocable direction to the master settlement escrow agent may include the direction to pay any
12 residual interest in tobacco settlement revenues initially to or upon the order of the authority or
13 corporation or to any escrow agent or any trustee under an indenture or other agreement
14 securing any bonds. Upon the filing of a certified copy of the instrument or agreement by the
15 Governor, the sale, conveyance, or other transfer of rights under or with respect to the master
16 settlement agreement, including the right to receive the tobacco settlement revenues, shall, for
17 all purposes, be a true sale and absolute conveyance of all right, title, and interest therein
18 described in accordance with the terms thereof, valid, binding, and enforceable in accordance
19 with the terms thereof and such instrument or agreements and any related instrument, agreement,
20 or other arrangement, including any pledge, grant of security interest, or other encumbrance
21 made by the corporation or the authority to secure any bonds issued, incurred, or created by the
22 corporation or the authority, are not subject to disavowal, disaffirmance, cancellation, or
23 avoidance by reason of insolvency of any party, lack of consideration, or any other fact,
24 occurrence, or rule of law. The procedures and requirements set forth in this section shall be the

1 sole procedures and requirements applicable to the sale of the state's rights under the master
2 settlement agreement, including the sale of tobacco settlement revenues, and it is not necessary
3 to satisfy or comply with any other existing law which would otherwise apply to the sale of
4 assets of the state or impose procedures or restrictions with respect thereto.

5 Section 3. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The authority may establish by resolution a special purpose corporation which shall be body
8 corporate and politic and instrumentality of, but having a legal existence independent and
9 separate from, the State of South Dakota and the authority. The corporation shall be established
10 for the express limited public purposes set forth in this Act and no part of the net earnings of the
11 corporation shall inure to any private individual.

12 The corporation shall be governed by a board consisting of the members of the authority and
13 two additional persons appointed by the Governor, which two additional members shall be
14 independent from the state. The resolution establishing the corporation shall serve as the charter
15 of the corporation and may be amended from time to time by the authority, but the resolution
16 shall at all times provide that the power and the authority of the corporation shall be subject to
17 the terms, conditions, and limitations of this Act and any applicable covenants or agreements of
18 the corporation in any indenture or other agreement relating to any then outstanding bonds. The
19 corporation may enter into contracts regarding any matter connected with any corporate purpose
20 within the objects and purposes of this Act.

21 The authority and corporation may delegate by resolution to one or more officers or
22 employees of the authority or corporation such powers and duties as it may deem proper.

23 The corporation may issue bonds and secure repayment of the bonds with amounts payable
24 out of tobacco settlement revenues or any other property or funds of the corporation.

1 The corporation may pledge as security for any bonds any rights under the master settlement
2 agreement held by the corporation, including the right to receive or collect tobacco settlement
3 revenues, moneys, or other funds deposited with, payable to or held by or on behalf of the
4 corporation, and the proceeds of the foregoing and any proceeds of bonds. Any right of the state
5 to the residual interest in tobacco settlement revenues shall be, in all respects, junior and
6 subordinate to any such pledge if and to the extent so provided by the terms of any instrument
7 or agreement described in section 2 of this Act and signed on behalf of the state by the Governor.
8 Any such pledge made by the corporation shall be valid and binding from the time the pledge is
9 made. The property, revenues, moneys, and other funds so pledged and thereafter held or
10 received by or on behalf of the corporation shall immediately be subject to the lien of the pledge
11 without any physical delivery thereof or further act; and, subject only to the provisions of prior
12 pledges or agreements of the corporation, the lien of the pledge shall be valid and binding as
13 against the state and all parties having claims of any kind in tort, contract, or otherwise against
14 the corporation irrespective of whether such parties have notice thereof. No ordinance,
15 resolution, trust agreement, or other instrument by which such pledge is created need be filed or
16 recorded except in the records of the corporation.

17 In connection with the issuance of bonds or, at any time with respect to bonds, the
18 corporation may enter into arrangements to provide additional security and liquidity for bonds.
19 The arrangements may include, without limitation, bond insurance, letters of credit, and lines of
20 credit by which the corporation may borrow funds to pay or redeem its bonds and purchase or
21 remarketing arrangements for assuring the ability of owners of the bonds to sell or have
22 redeemed their bonds. The corporation may enter into contracts and may agree to pay fees to
23 persons providing the arrangements, including from bond proceeds.

24 The resolution authorizing the issuance of bonds or the indenture or other agreement

1 approved by the resolution may provide that interest rates may vary from time to time depending
2 upon criteria established by the corporation, which may include, without limitation, a variation
3 in interest rates as may be necessary to cause bonds to be remarketable from time to time at a
4 price equal to their principal amount, and may provide for appointment of a national banking
5 association, bank, trust company, investment banking firm, or other financial institution to serve
6 as a remarketing agent in that connection. The indenture or other agreement with respect to
7 bonds may provide that alternative interest rates or provisions will apply during such times as
8 bonds are held by a person providing a letter of credit or other credit enhancement arrangement
9 for bonds.

10 In connection with bonds under this Act or the investment of proceeds, bonds, or other funds
11 of the corporation, the corporation may enter into contracts that it determines necessary or
12 appropriate to permit it to manage payment or interest rate risk. These contracts may include,
13 but are not limited to, interest rate exchange agreements; contracts providing for payment or
14 receipt of funds based on levels of or changes in interest rates; contracts to exchange cash flows
15 or series of payments; and contracts incorporating interest rate caps, collars, floors, or locks.

16 The corporation may not file a voluntary petition under or be or become a debtor or bankrupt
17 under the federal bankruptcy code or any other federal or state bankruptcy, insolvency, or
18 moratorium law or statute as may, from time to time, be in effect and neither any public officer
19 nor any organization, entity, or other person shall authorize the corporation to be or become a
20 debtor or bankrupt under the federal bankruptcy code or any other federal or state bankruptcy,
21 insolvency, or moratorium law or statute, as may, from time to time be in effect.

22 The corporation may not guarantee the debts of another.

23 The corporation may not be required to file any reports with the state other than those
24 required to be filed with the Legislature by authorities which issue bonds.

1 Except for debts incurred directly by the corporation, no indebtedness, bonds, or obligation,
2 issued, incurred, or created by the State of South Dakota or any state agency or instrumentality
3 may be or become a lien, charge, or liability against the corporation or the property or funds of
4 the corporation.

5 Section 4. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The purposes of the corporation established by the authority pursuant to this Act are:

8 (1) To purchase, acquire, own, pledge, encumber, or otherwise transfer all right, title, and
9 interest of the state in, to, and under the master settlement agreement, including,
10 without limitation, all right, title, and interest to receive or collect tobacco settlement
11 revenues;

12 (2) To raise funds through the issuance of bonds or other obligations or evidences of
13 indebtedness or ownership or through the sale, transfer, pledge, encumbrance,
14 securitization, factoring, or other conveyance of the rights described above in
15 subdivision (1) of this section for the purposes of establishing the permanent tobacco
16 settlement development trust fund and as otherwise described in this Act;

17 (3) To serve the Legislature by making reports concerning the foregoing;

18 (4) To sue and be sued and to prosecute and defend, at law or in equity, in any court
19 having jurisdiction of the subject matter and of the parties;

20 (5) To have and to use a corporate seal and to alter the same at pleasure;

21 (6) To maintain an office at such place or places as the authority by resolution may
22 designate;

23 (7) To receive funds transferred to it by the authority, the state, or others; and

24 (8) To do all things necessary and convenient to carry out the purposes of this chapter.

1 The corporation shall also be vested with the same power and authority, and shall be subject
2 to the same limitations and conditions, as are applicable to the authority pursuant to §§ 5-12-1.1,
3 5-12-4, 5-12-5, 5-12-8.1, 5-12-22, 5-12-24, 5-12-26, 5-12-27, 5-12-27.1, 5-12-27.2, 5-12-27.3,
4 5-12-27.4, 5-12-27.6, 5-12-28, 5-12-38, 5-12-38.1, and 5-12-40, except such power and
5 authority shall be exercised with respect to and shall be limited to the purposes of the corporation
6 set forth in section 4 of this Act, the final maturity date of any bonds issued, incurred, or created
7 hereunder may not be in excess of forty years for the date of delivery thereof, and the
8 corporation may not engage in any unrelated activities. In addition, the corporation may invest
9 any of its funds in permitted investments.

10 Section 5. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 No bond of the corporation issued, incurred, or created under this Act may be or become a
13 lien, charge, or liability against the State of South Dakota or the authority, nor against the
14 property or funds of the State of South Dakota or the authority within the meaning of the
15 Constitution or statutes of South Dakota. In no event may any of the funds deposited into the
16 permanent tobacco settlement development trust fund, the tobacco settlement interest fund, or
17 the tobacco settlement residual fund be pledged to secure payment of any bonds issued under the
18 authority of this Act.

19 Section 6. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The State of South Dakota pledges to and agrees with the holders of bonds issued, incurred,
22 or created under this Act that the state will not limit or alter the rights and powers vested in the
23 corporation and the authority by this Act so as to impair the terms of any contract made by the
24 corporation or the authority with those holders or in any way impair the rights and remedies of

1 those holders until such bonds, together with interest thereon, interest on any unpaid installments
2 of interest, and all costs and expenses in connection with any action or proceedings by or on
3 behalf of those holders are fully met or discharged. In addition, the state pledges to and agrees
4 with the holders of bonds issued, incurred, or created under this Act that the state will not limit
5 or alter the basis on which tobacco settlement revenues that have been sold pursuant to this Act
6 are to be paid to the corporation or the authority so as to impair the terms of any such contract.
7 The corporation and authority each may include these pledges and agreements of the state in any
8 contract with the holders of bonds issued, incurred, or created under this Act.

9 Neither the State of South Dakota nor the authority is liable on bonds issued, incurred, or
10 created under this Act, those bonds may not be a debt of the state or the authority, and this Act
11 may not be construed as a guarantee by the state or the authority of the debts of the corporation.
12 The bonds shall contain a statement to this effect on the face of the bonds.

13 Section 7. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The authority is not liable for any bond issued, incurred, or created by the corporation under
16 this Act or for any act or failure to act of the corporation. The corporation may not be liable for
17 any obligation of the South Dakota Building Authority or for any act or failure to act by the
18 building authority.

19 Section 8. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The corporation is hereby declared to be performing a public function on behalf of the state
22 and to be a public instrumentality of the state. The income of the authority and the corporation,
23 and all properties at any time owned by the authority and the corporation, are exempt from all
24 taxation in the State of South Dakota. In addition, the corporation is exempt from all filing,

1 reporting, and similar requirements otherwise applicable to nonprofit and other corporations.

2 For purposes of chapter 47-31A and any amendment thereto and substitution therefor, bonds,
3 notes, certificates, or other obligations issued, incurred or created by the corporation under this
4 Act shall be deemed to be securities issued by a public instrumentality of the State of South
5 Dakota.

6 Section 9. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The corporation may employ attorneys, accountants, tobacco industry consultants, and
9 financial experts, managers, and such other employees and agents as may be necessary in its
10 judgment and to fix their compensation.

11 Section 10. The permanent tobacco settlement development trust fund is hereby established
12 in the state treasury as a special trust fund. That portion of the net proceeds of sale of tobacco
13 settlement revenues which is derived from the net proceeds of bonds shall be deposited in the
14 permanent tobacco settlement development trust fund. In addition, any residual interest in
15 tobacco settlement revenues shall, upon receipt by the state, be deposited in the tobacco
16 settlement residual fund. The principal of the permanent tobacco settlement development trust
17 fund may not be expended except for costs and expenses incurred in investing or otherwise
18 administering the permanent tobacco settlement development trust and its assets. The amounts
19 in the permanent tobacco settlement development trust fund shall be state public funds within the
20 meaning of chapter 4-4 and shall be invested in permitted investments and otherwise in
21 accordance with §§ 4-5-23 and 4-5-26. All investment earnings from the permanent tobacco
22 settlement development trust fund shall be transferred to and deposited in the tobacco
23 development interest fund on a period basis no less frequently than annually.

24 Section 11. The tobacco settlement residual fund is established in the state treasury. The

1 amounts received by the state pursuant to any residual interest in tobacco settlement revenues
2 shall, upon receipt, be transferred to and deposited in the tobacco settlement residual fund. The
3 amounts in the tobacco settlement residual fund shall be state public funds within the meaning
4 of chapter 4-4 and shall remain in such fund until appropriated by the Legislature. The amounts
5 in the tobacco settlement residual fund shall be invested in permitted investments or otherwise
6 in accordance with §§ 4-5-23 and 4-5-26.

7 Section 12. The tobacco development interest fund is established in the state treasury. The
8 amounts in the tobacco development interest fund shall be state public funds within the meaning
9 of chapter 4-4 and shall remain in the fund until appropriated by the Legislature. The amounts
10 in the tobacco development interest fund shall be invested in permitted investments or otherwise
11 in accordance with §§ 4-5-23 and 4-5-26.

12 If in order to obtain or preserve any exclusion of interest on bonds from gross income of the
13 holders thereof for purposes of federal income taxation, the corporation or authority enters into
14 any agreement or covenant with the holders of bonds (or the trustee or other fiduciary acting on
15 behalf of or for the benefit of holders of bonds) that imposes restrictions or conditions on the
16 investment, use, expenditure, or other application of the proceeds of bonds issued, incurred, or
17 created under this Act, including any investment earnings thereon (whether while on deposit in
18 the permanent tobacco settlement development trust fund, the tobacco development interest fund
19 or otherwise), then the state and each agency, authority, or other body politic of the state or
20 acting on behalf of the state, shall observe and fully honor each such agreement, covenant, or
21 other restriction or condition with respect to investment, use, expenditure, or application thereof.
22 The State of South Dakota pledges to and agrees with the holders of bonds issued, incurred, or
23 created under this Act that the state will not invest, use, expend, or otherwise apply such
24 proceeds of bonds and any other amounts so as to impair the terms of any such agreement or

1 covenant made by the corporation or authority with any such holders (or trustee or other
2 fiduciary) or in any way impair the exemption or exclusion of interest on any such bonds from
3 federal income taxation. The corporation and authority each may include these pledges and
4 agreements of the state in any contract with the holders of bonds issued, incurred, or created
5 under this Act.

6 Section 13. It is the intention of this Legislature that funds deposited in the tobacco
7 development interest fund and the tobacco settlement residual fund be expended pursuant to
8 separately enacted statutes which will implement development programs intended to provide for
9 the health, welfare, and prosperity of the State of South Dakota and its residents. Any such
10 development program shall be established by a separately enacted statute which makes express
11 reference to this Act and the terms and conditions of such program shall be specified in such
12 statute. Any such statute shall expressly incorporate any agreements, covenants, or restrictions
13 described or referred to in or by sections 6 and 12 of this Act and any investment, use,
14 expenditure, or other application of moneys described in section 12 of this Act shall be expressly
15 subject to and in full compliance with the agreements, covenants, restrictions, and conditions
16 imposed by the terms of section 12 of this Act.

17 Section 14. Whereas, this Act is necessary for the support of the state government and its
18 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
19 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

644E0640

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 245** - 02/16/2001

Introduced by: Senators Brown (Arnold), Brosz, Daugaard, Drake, Ham, Hutmacher,
McCracken, Olson (Ed), and Sutton (Dan) and Representatives Heineman,
Pitts, and Smidt

1 FOR AN ACT ENTITLED, An Act to create a health care access and preservation trust fund
2 and to provide that earnings from the fund be used for certain health care purposes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 28-6-33 be amended to read as follows:

5 28-6-33. There is hereby established in the state treasury a fund known as the
6 ~~intergovernmental transfer~~ health care access and preservation trust fund. The fund shall include
7 revenue received from publicly owned and operated nursing facilities for remittance to the fund
8 under § 28-6-31. The department shall administer the fund and shall adopt procedures for
9 participation by publicly owned and operated nursing facilities. All moneys designated for the
10 fund from whatever source derived shall be deposited with the state treasurer in the
11 ~~intergovernmental transfer~~ health care access and preservation trust fund, except for dollars
12 appropriated by the Legislature for fiscal year 2002 for the neuromuscular program, the diabetes
13 screening program, and the purchase of public access defibrillation equipment. The ~~amounts in~~
14 ~~the intergovernmental transfer~~ fund shall be invested pursuant to §§ 4-5-23 and 4-5-26 and the

1 earnings shall be deposited in the ~~intergovernmental transfer~~ health care access and preservation
2 interest fund.

3 Section 2. That chapter 28-6 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The health care access and preservation interest fund is established in the state treasury. The
6 fund shall be invested according to §§ 4-5-23 and 4-5-26. The investment earnings of the fund
7 shall be credited to the fund. The money in the fund shall be appropriated by the Legislature to
8 fund health care related uses.

9 Section 3. That § 28-6-31 be amended to read as follows:

10 28-6-31. Each publicly owned and operated nursing facility participating under the provisions
11 of §§ 28-6-28 to 28-6-36, inclusive, immediately upon receiving a payment under § 28-6-30,
12 shall remit the amount of that payment, less a transaction fee, to the department for credit to:

13 (1) The ~~intergovernmental transfer~~ health care access and preservation trust fund in an
14 amount equal to the applicable federal medical assistance percentage times the total
15 remittance to the department, less the transaction fee; and

16 (2) The department's other funds for all remaining amounts.

17 Section 4. That § 28-6-35 be amended to read as follows:

18 28-6-35. The department may promulgate rules pursuant to chapter 1-26 for the
19 administration of §§ 28-6-28 to 28-6-36, inclusive. The rules may include criteria for
20 establishing, funding, and administering the pool, criteria for participation in the
21 intergovernmental transfer, penalties for failing to immediately remit the funds to the department,
22 criteria for the transfer of funds, the establishment of transaction fees, and other policies to
23 facilitate the administration of the ~~intergovernmental transfer~~ health care access and preservation
24 trust fund ~~or, the funding pool, and the health care access and preservation interest fund.~~

1 Section 5. That § 28-6-36 be amended to read as follows:

2 28-6-36. Sections 28-6-28 to ~~28-6-36~~ 28-6-35, inclusive, and section 2 of this Act do not
3 create an entitlement to any funds. The department may disburse funds to the extent funds are
4 available and, within its discretion, to the extent such appropriations are approved.